IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 10TH NOVEMBER 2006 / 19TH KARTHIKA 1928

ST.Rev..No. 296 of 2003

TA.288/2000 of S.T.A.T.ADDL.BENCH,ERNAKULAM
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REVISION PETITIONER(ASSESSEE/APPELLANT):

M/S. NEDUMTHALLIL AGENCIES,
MARKET ROAD, NORTH PARUR-683 513.

BY ADV. SRI.K.B.MUHAMED KUTTY
SRI.K.M.FIROZ

RESPONDENT: (REVENUE/RESPONDENT):

STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMEN, TAXES DEPT.
SECRETARIAT, THIRUVANANTHAPURAM.

BY SPL. GOVT. PLEADER (SHRI V.V. ASOKAN)

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 24.8.2006, THE COURT ON 10.11.2006 PASSED THE FOLLOWING:

C. N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

S.T. REV. NO.296 OF 2003

Dated this the 10th day of November, 2006

JUDGMENT

K. M. Joseph, J.

Whether RLH Gas is an item which falls under Entry 97 (vi) of the Ist Schedule of the KGST Act, is the question posed in this Revision. Entry 97(vi) is extracted hereunder:

"97(vi): Liquified Petroleum gas	At the point of first sale in the State by a dealer who is liable to tax under Section 5."	20%

Petitioner is a dealer in Liquified Petroleum Gas (hereinafter referred to as LPG) and Residual Liquified Hydrocarbon Gas (hereinafter referred to as RLH Gas). According to petitioner, while LPG falls under item 97(vi) of the Ist Schedule of the Act, the assessing authority has erred in treating RLH Gas as falling under the entry "Petroleum Product". According to petitioner,

LPG & RLH Gas are different in many aspects. Reliance was placed on letter dated 6.12.1999 issued by JCL International Limited. The said letter would show that RLH Gas and LPG are two different types of gas, and that the former is a residual byproduct of petro chemical industry under the Department of Chemicals and Petro Chemicals, Government of India. It is also contended that on the basis of the said communication that the containers for the two gases are also made under different standards. The rate of tax under Entry 97(vi) is 20 per cent. Petitioner has an alternate case also that even if it is considered as a petroleum product, it could be taxed only as "other petroleum products" coming under item No.97(v) of the Ist Schedule.

2. The tribunal has elaborately examined the question. It has taken note of the contents of RLH Gas. Butane - 1 makes up 27.8 per cent while Isobutane content of it is 45.3 per cent. The

tribunal also analysed the contents of LPG and found that it was clear that the contents are more or less the same. The fact that LPG comes under the Petroleum Ministry and RLH Gas is brought under the Ministry of Petro Chemicals may not suffice to upset the finding rendered by the tribunal. We are inclined to think that the view taken by the tribunal is reasonable and need not be interfered with because the tribunal has, on analysing the composition of LPG and RLH Gas, found that the contents of both are more or less the same. Contention of petitioner that RLH gas is product of petro-chemical industry does not go against the said finding because, petro-chemical industry has petroleum products as raw-materials. Since RLH gas has almost the same contents as LPG, it is rightly classified under Entry 97 (vi). The alternate contention that it will come under Entry 97 (v) is not acceptable because RLH gas is also used as cooking gas or fuel like LPG and the more appropriate classification will be under Entry 97(vi) along with LPG. Petitioner is unable to

make out how the finding can be said to be a perverse one. Accordingly, the S.T. Rev. fails and it is dismissed.

C.N. RAMACHANDRAN NAIR, JUDGE

K. M. JOSEPH, JUDGE

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